

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
JOSE O. DAVILA,

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: <u>2/17/11</u>

Petitioner,
-against-

08 Civ. 3227 (DAB)
ORDER

MARK BRADT, Acting Superintendent,
Elmira Correctional Facility,

Respondent.

-----X
DEBORAH A. BATTIS, United States District Judge.

On December 4, 2009, United States Magistrate Judge Douglas F. Eaton issued a Report and Recommendation ("Report"), recommending that Petitioner's Petition for a Writ of Habeas Corpus be denied. (Report at 3, 11.) For the reasons set forth below, after conducting the appropriate level of review, the Report and Recommendation of Magistrate Judge Eaton dated December 4, 2009 is adopted in its entirety. Accordingly, the Petition is DENIED.

I. Objections to the Report and Recommendation

"Within fourteen days after being served with a copy [of a Magistrate Judge's Report and Recommendation], a party may serve and file specific written objections to the proposed findings and recommendations." Fed. R. Civ. P. 72(b)(2); accord 28 U.S.C. § 636(b)(1)(C). The court may adopt those portions of the report to which no timely objection has been made, as long as there is

no clear error on the face of the record. Wilds v. United Parcel Serv., Inc., 262 F.Supp.2d 163, 169 (S.D.N.Y. 2003). A district court must review de novo "those portions of the report or specified proposed findings or recommendations to which objection is made." 28 U.S.C. § 636(b)(1)(C). "To the extent, however, that the party makes only conclusory or general arguments, or simply reiterates the original arguments, the Court will review the Report strictly for clear error." Indymac Bank, F.S.B. v. Nat'l Settlement Agency, Inc., No. 07-CV-6865, 2008 WL 4810043, at *1 (S.D.N.Y. Nov. 3, 2008); see also Ortiz v. Barkley, 558 F.Supp.2d 444, 451 (S.D.N.Y. 2008) ("Reviewing courts should review a report and recommendation for clear error where objections are merely perfunctory responses, argued in an attempt to engage the district court in a rehashing of the same arguments set forth in the original petition.") (citation and internal quotation marks omitted). After conducting the appropriate levels of review, the Court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the Magistrate. 28 U.S.C. § 636(b)(1)(C).

The objections of pro se parties are "generally accorded leniency and should be construed to raise the strongest arguments that they suggest." Howell v. Port Chester Police Station, 2010 WL 930981, at *1 (S.D.N.Y. Mar. 15, 2010) (citation omitted).

"Nonetheless, even a pro se party's objections to a Report and Recommendation must be specific and clearly aimed at particular findings in the magistrate's proposal, such that no party be allowed a second bite at the apple by simply relitigating a prior argument." Id. (quoting Pinkney v. Progressive Home Health Servs., No. 06-CV-5023, 2008 U.S. Dist. LEXIS 55034, at *2-3 (S.D.N.Y. July 21, 2008) (internal quotations marks omitted)).

Pro Se Plaintiff has filed timely objections to the Report. See Letter addressed to Honorable Deborah A. Batts, dated January 12, 2010. However, a review of those Objections makes clear that they consist of general objections to what Petitioner perceives as an imbalance of power between himself and Respondents, see id. at 1 (citing "Goliath v. Davi[d], I Sam. 17-48-51"), and of attempts to relitigate a prior argument concerning the sufficiency of the evidence presented at trial, see id. at 2-3 (listing evidence presented below). Therefore, despite having examined the Objections with due regard for the leniency which should be shown to pro se pleadings, and despite having construed the Objections as raising the strongest arguments they suggest, the Court finds that Petitioner's Objections are merely perfunctory and not clearly aimed at specific findings in the Report. Accordingly, the Court has reviewed the Report for clear error and, having found none, now adopts it in its entirety.

II. Conclusion

Having conducted the appropriate level of review of the Report and Recommendation of United States Magistrate Judge Douglas F. Eaton dated December 9, 2009, this Court APPROVES, ADOPTS, and RATIFIES the Report's factual recitations and findings and recommendations in their entirety. Because Petitioner has not made a substantial showing of the denial of a constitutional right, a certificate of appealability will not issue. 28 U.S.C. § 2253; see United States v. Perez, 129 F.3d 255, 260 (2d Cir. 1997). The Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith. See Coppedge v. United States, 369 U.S. 438, 8 L. Ed. 2d 21, 82 S. Ct. 917 (1962).

The Clerk of the Court is directed to dismiss the petition with prejudice and to close the docket in this case.

SO ORDERED.

Dated: New York, New York

February 17, 2011

Deborah A. Batts

DEBORAH A. BATTS
United States District Judge